

In the Matter of License No. 155683 Merchant Mariner's Document No.
Z-925675-D3 and all other Seaman Documents
Issued to: WAYNE L. KORB

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

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WAYNE L. KORB

This appeal has been taken in accordance with title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 9 October 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. Eight specifications allege that while serving as deck maintenanceman on board the American SS ARTHUR FRIBOURG under authority of the document above described, Appellant delayed the sailing of his vessel on 19 June 1957; he failed to perform his duties on five separate dates; Appellant held the Master while he was struck by another crew member on 21 July 1957; Appellant wrongfully engaged in a fist fight with a fellow crew member on 16 August 1957.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and six specifications. Appellant entered a plea of guilty to one specification alleging failure to perform his duties and to the specification pertaining to a fist fight on 16 August 1957.

The Investigating Officer introduced in evidence the testimony of the Master of the ARTHUR FRIBOURG at the times in question and photostatic copies of the entries in the ship's Official Logbook as well as other documentary exhibits. Appellant testified in his defense.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard. The Examiner concluded that the charge and eight specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of 15 months outright and 9 months on 18 months' probation.

The decision was served on 10 October 1957. Appeal was timely filed on 6 November 1957.

FINDINGS OF FACT

Between 19 June and 17 August 1957, Appellant was serving as deck maintenanceman on board the American SS ARTHUR FRIGOURG and acting under authority of his Merchant Mariner's Document No. Z-925675-D3.

At 0830 on 19 June 1954, the ship was ready to get underway from Honolulu as scheduled. The sailing board was properly posted. Appellant and five or six other crew members delayed the sailing of the ship for 43 minutes by remaining on the dock without permission until 0913.

On 19 June, 12 July, 22 July, 26 July and 13 August 1957, Appellant failed to perform his duties on board the ship. On 19 June and 13 August, this was due to intoxication.

On 21 July 1957, the ship was at Inchon, Korea. The Master of the ship was sitting in a local barroom when he was approached by Appellant and the crew member Holscher at approximately 2100. They asked the Master for a draw which he refused. Shortly thereafter, Holscher struck the Master in the face and Appellant grabbed the Master's arms from behind when he started to get the best of Holscher. The latter picked up a chair and swung it at the Master's head. He managed to pull one arm loose from Appellant's grip and raised it to break the force of the blow from the chair. Further scuffling among the three seamen followed before the military police arrived. The Master received medical treatment for a cut over one eye and various abrasions.

On 16 August 1957, the ship was at Kahului, Territory of Hawaii, when Appellant engaged in a fist fight, without justification, with another member of the crew while they were on board the vessel.

Appellant has no prior disciplinary record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the specifications do no charge misconduct; his acts did not constitute misconduct because his conduct was caused by provocation; the specifications were not proved by reliable and probative evidence; Appellant was not

properly represented at the hearing or apprised of his rights; the Master failed to maintain discipline and to protect those under his command; the conclusions are incorrect as a matter of law; and the Examiner acted arbitrarily in suspending Appellant's documents.

APPEARANCE ON APPEAL: Alvin I. Apfelberg, Esquire, of New York City, of counsel.

OPINION

Appellant's contentions on appeal do not specify in what respects these errors are supposed to have been committed. Hence, they are so vague and general as to merit little consideration. The specifications allege acts of misconduct and the allegations are fully proved by the testimony of the Master supported by pertinent log entries and appellant's pleas of guilty to two of the specifications. The Examiner specifically stated that he accepted the above version (see Findings of Fact), given by the Master, with respect to the most serious offense of physically abusing the Master. The record does not show that the Master was derelict in the performance of his duties or that Appellant was justifiably provoked to commit any of these numerous acts of misconduct.

At the beginning of the hearing, the Examiner informed Appellant of his right to be represented by counsel as well as his other rights such as calling witnesses, obtaining depositions, cross-examination of opposing witnesses and testifying in his behalf.

Under the circumstances, it is believed that the order imposed was a lenient one rather than that the Examiner acted arbitrarily as contended by Appellant.

ORDER

The order of the Examiner dated at New York, New York, on 9 October 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 18th day of April, 1958.